### CONTRACT #2 RFS # N/A

### **Tennessee Board of Regents**

VENDOR: EBSCO Publishing



### **Tennessee Board of Regents**

1415 Murfreesboro Road - Suite 350 - Nashville, Tennessee 37217-2833 (615) 366-4400 FAX (615) 366-4464 www.tbr.edu

June 1, 2007

Ms. Leni S. Chick Fiscal Analyst Rachel Jackson Building, 8<sup>th</sup> Floor Nashville, TN 37243 RECEIVED

JUN 0 1 2007

FISCAL REVIEW

Dear Ms. Chick:

Enclosed please find an Agreement between the Tennessee Board of Regents and Ebsco Publishing for licensing two (2) online database subscriptions for nursing texts and journals. Please note the term of this Agreement begins August 1, 2007.

Per Fiscal Review's request to see non-competitive agreements, this contract must be approved by the Committee. Please contact me regarding the date this will go before the Fiscal Review Committee and I will inform the representatives to insure they are present for the meeting in which the contract will be discussed. If you have any questions, please do not hesitate to contact me at 366-4436.

Information regarding the contract may be sent to my attention at the Tennessee Board of Regents, 1415 Murfreesboro Road, Suite 350, Nashville, Tennessee 37217.

Sincerely,

Angela A. Gregory

Director of Purchasing and Contracts

cc:

Charles Manning Bob Adams Lisa Hall, RODP

Austin Peay State University • East Tennessee State University • Middle Tennessee State University • Tennessee State University

Tennessee Tech University • University of Memphis • Chattanooga State Technical Community College

Cleveland State Community College • Columbia State Community College • Dyersburg State Community College

Jackson State Community College • Motlow State Community College • Pellissippi State Technical Community College

Roane State Community College • Southwest Tennessee Community College • Volunteer State Community College

Walters State Community College • Nashville State Technical Community College • Northeast State Technical Community College

The Tennessee Technology Centers

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ate received by TDR.	<u> </u>	

Contract Number: \_\_\_\_

TBR internal use only)

### TENNESSEE BOARD OF REGENTS CONTRACT SUMMARY SHEET

r contract is submitted less than two (2) weeks before the effective date (1 mo in explanation of the delayed submission:	nth required for complex contracts), provide
. Institution/Central Office: TBR	Phone: 366-3981
Direct Contract Questions to: Lisa Hall Fax: 366-3986	· · · · · · · · · · · · · · · · · · ·
. Contract with: EBSCO Publishing Address: 10 Estes Street, P.	.O. Box 682, Ipswich, MA 01938
Contact Person: Lainie Brown Phone: 1-800-653-2726 #586	
. Purpose of Contract (include type – i.e. Dual Service, Clinical, etc.):	
License Online Database Subscriptions for Nursing Texts and Journals for Programs	r the RODP MSN & TTC Nursing
<ul> <li>✓ TBR Standard Form Agreement</li> <li>✓ Renewal of an Existing Contract</li> <li>✓ Vendor Gener</li> <li>✓ Vendor Contract</li> </ul>	nse Agreement rated Contract act with Amendment udes Confidential Research Agreement
COPY OF AGREEMENT BEING AMENDED, EXTENDED OR PREVIOUS OWELL AS ANY EXHIBITS.	CONTRACT ATTACHED FOR REFERENCE A
Contract Terms: Term (i.e. 7/1/05 – 6/30/06, 1 year from execution, etc.): 8-1-2007 throu	gh 7-31-2008
Possible Number of Renewals: 4 Lease:  ye	es 🚺 no
Payment Frequency: Annually Amount per Year: See attached Total A	Amount (w/possible renewals): 507,818.00
If this contract is a result of an RFQ/RFP, is the contract available for system	m-wide use: 🔽 yes 🗌 no
* If competitive process is not used, attach supporting documentation, included the competitive process.	uding the non-competitive justification form
Non-Debarment-Verification (www.epls.gov): 🔽 Date Verified: 5/8/07	9. Ethnicity Code: (MJ) Majority Own
<ol> <li>Contract Monitor (individual responsible for ensuring receipt of goods/services Frequency of monitoring (monthly, quarterly, semi-annually or annually): <u>Annually</u></li> </ol>	): Peter Nerzak ually
Signature of Institution/Central Office official certifying that he/sl recommends its approval.	he has read this Contract and
Signature (Department)	
Signature of Institution/Central Office official certifying complian	nce with TBR Purchasing Procedures:
(In ala Dielose	
Signature (Purchasing/Contracts Officer)	
orm Completed by: Carol King/Angie/Gregory Date: 5/31/07	(TBR 7/06)
their mbace 4/1/07	

Nursing & Allied Health Collection Clinical Pharmacology Health Source: Nursing Academic Edition Tennessee Board of Regents (TBR) Projected Cost of Package:(\*\*) CINAHL with Full Text

8/1/07-7/31/08 8/1/08-7/31/09 8/1/09-7/31/10 8/1/10-7/31/11 8/1/11-7/31/12 \$89,190 \$94,987 \$101,162 \$107,738 \$114,741

at least the same number of accessing sites

(\*\*) Pricing is based on continuation of

### REQUEST: NON-COMPETITIVE CONTRACT

APPROVED	
Commissioner of Finance & Administration	
Date:	

	Each of the request items below indicates specific information that <u>must</u> be individually detailed or addressed <u>as required</u> .  A request can not be considered if information provided is incomplete, non-responsive, or does not clearly address each of the requirements individually as required.					
1)	RFS#					
2)	State Agency Name : Tennessee Board of Regents					
3)	) Service Caption : Online Database Subscription for Nursing Programs					
4)	Proposed Contractor : EBSCO Publishing					
5)	5) Contract Start Date : (attached explanation required if date is < 60 days after F&A receipt) 8/01/07					
6)	Contract End Date IF all	Options to Extend the Contract are Exercised :	07/31/12			
7)	Total Maximum Cost IF	all Options to Extend the Contract are Exercised :	\$507,818.00			
8)	Approval Criteria : (select one)	use of Non-Competitive Negotiation is in the best interest	of the state			
		only one uniquely qualified service provider able to provi	de the service			
9)	Description of Service t	o be Acquired :				
	oscription for online resource alth Source Nursing Acade	ces in support of the RODP Nursing Masters (MSN) Program, consi mic.	sting of CINAHL with Full Text and			
10)	Explanation of the Need	for or Requirement Placed on the Procuring Agency to Acquir	re the Service :			
Su	pport of TBR Nursing Progr	rams				
11)	Explanation of Whether	the Procuring Agency Bought the Service in the Past, & if so,	What Procurement Method It Used :			
Init	ially acquired via sole sour	ce on an annual basis to assure that program successful before lon	ger term commitment.			
12)	Name & Address of the (not required if proposed	Proposed Contractor's Principal Owner(s): contractor is a state education institution)	- '			
10 PC	(not required if proposed contractor is a state education institution)  EBSCO Publishing 10 Estes Street PO Box 682 Ipswich, MA 01938					

13) Evidence of the Proposed Contractor's Experience and Length of Experience Providing the Service :					
and services for tens of thousands of lil through EBSCO databases are substar International Bibliography, CINAHL, Ps	praries around the globe. The quality, d ntial. EBSCO is also a leading provider	other sources. They provide quality database products epth and sheer number of full text publications available of popular secondary databases such as MLA is the sole source provider for CINAHL and Health resources at this time.			
14) Documentation of Office for Info (required only if the subject service	rmation Resources Endorsement : involves information technology)				
select one: Documen	tation Not Applicable to this Request	Documentation Attached to this Request			
15) Documentation of Department o (required only if the subject service	f Personnel Endorsement : involves training for state employees)				
select one: Documer	tation Not Applicable to this Request	Documentation Attached to this Request			
16) Documentation of State Architect (required only if the subject services	et Endorsement : e involves construction or real property r	elated services)			
select one: Documer	tation Not Applicable to this Request	Documentation Attached to this Request			
17) Description of Procuring Agenc	y Efforts to Identify Reasonable, Com	petitive, Procurement Alternatives :			
NA – Sole source letter attached					
18) Justification of Why the State SI (Being the "only known" or "best" s	nould Use Non-Competitive Negotiati ervice provider to perform the service a	on Rather Than a Competitive Process : s desired will not be deemed adequate justification.)			
NA – Sole source provider of this nursi	ng suite of databases				
REQUESTING AGENCY HEAD SIGN. (must be signed & dated by the ACTUA by an authorized signatory will be access	ATURE & DATE :  AL procuring agency head as detailed or pted only in documented exigent circum	n the Signature Certification on file with OCR— signature instances)			
Malla	<b></b>	5/3//02			
Agency Head Signature		Date			
	•				



May 21, 2007

Mr. Peter Nerzack Tennessee Board of Regents Suite 350 1415 Murfreesboro Road Nashville, TN 37217

RE: Nursing Suite of Databases

Dear Peter ~

The purpose of this communication is to provide you with a sole source statement for the nursing suite of databases that you subscribe to with EBSCO Publishing for the Tennessee Board of Regents (TBR). By way of review, the resources that you subscribe to are as follows:

CINAHL with Full Text Health Source Nursing Academic

In addition you also receive:

Health Source Consumer (complimentary)

Clinical Pharmacology (complimentary).

EBSCO Publishing is the sole source provider for CINAHL with Full Text & Health Source Nursing Academic and does not intend to allow other vendors to provide access to these resources any time in the future.

Please let Lainie Brown know if you, or your colleagues Lisa Hall & Angela Gregory, have any questions or need additional specificity in this matter.

Very truly yours,

Gary C/Balentine Vice President Inside Sales EBSCO Publishing 10 Estes Street Ipswich, MA 01938



## PROFESSIONAL SERVICES AGREEMENT BETWEEN TENNESSEE BOARD OF REGENTS AND EBSCO PUBLISHING

This Contract, by and between TENNESSEE BOARD OF REGENTS, hereinafter referred to as the "Institution" and EBSCO PUBLISHING, hereinafter referred to as the "Contractor," is for the provision of providing an electronic database library for the Tennessee Board of Regents nursing programs, as further defined in the "SCOPE OF SERVICES."

The Contractor is corporation. The Contractor's address is: EBSCO Publishing 10 Estes Street Ipswich, MA 01938

The Contractor's place of incorporation or organization is Delaware.

#### A. <u>SCOPE OF SERVICES</u>:

A.1. Provide subscription for online resources in support of the nursing programs at the Tennessee Board of Regents institutions, as well as, the Regents Online Degree Program (RODP) Nursing Masters (MSN) program. A listing of eligible institutions is included as Attachment B.

#### B. CONTRACT TERM:

- B.1. <u>Contract Term.</u> This Contract shall be effective for the period commencing on August 1, 2007 and ending on September 30, 2008, renewable annually for 4 additional one-year renewals. The Institution shall have no obligation for services rendered by the Contractor which are not performed within the specified period.
- B.2. Term Extension. The Institution reserves the right to extend this Contract for an additional period or periods of time representing increments of no more than one year and a total contract term of no more than 5 years, provided that the Institution notifies the Contractor in writing of its intention to do so at least 30 days prior to the contract expiration date. An extension of the term of this Contract will be effected through an amendment to the Contract. If the extension of the Contract necessitates additional funding beyond that which was included in the original Contract, the increase in the Institution's maximum liability will also be effected through an amendment to the Contract and shall be based upon rates provided for in the original contract.

#### C. PAYMENT TERMS AND CONDITIONS:

C.1. <u>Maximum Liability</u>. In no event shall the maximum liability of the Institution under this Contract exceed \$507,818.00. The yearly liability amounts are as follows:

Year 1: \$ 89,190 Year 2: \$ 94,987 Year 3: \$101,162 Year 4: \$107,738 Year 5: \$114,741

The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the Institution requests work and the Contractor performs said work.

C.2. <u>Compensation Firm</u>. The Service Rates and the Maximum Liability of the Institution under this Contract are firm for the duration of the Contract and are not subject to escalation for any reason unless amended.

- C.3. Payment Methodology. The Contractor shall be compensated based on the Service Rates herein for units of service authorized by the Institution in a total amount not to exceed the Contract Maximum Liability established in Section C.1. The Contractor's compensation shall be contingent upon the satisfactory completion of units of service or project milestones defined in Section A. The Contractor shall submit an annual invoice, in form and substance acceptable to the Institution with all of the necessary supporting documentation, prior to any payment
- C.4. <u>Travel Compensation</u>.

The Contractor shall not be compensated or reimbursed for travel, meals, or lodging.

- C.5. <u>Payment of Invoice</u>. The payment of the invoice by the Institution shall not prejudice the Institution's right to object to or question any invoice or matter in relation thereto. Such payment by the Institution shall neither be construed as acceptance of any part of the work or service provided nor as an approval of any of the amounts invoiced therein.
- C.6. <u>Invoice Reductions</u>. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the Institution, on the basis of audits conducted in accordance with the terms of this contract, not to constitute proper remuneration for compensable services.
- C.7. <u>Deductions</u>. The Institution reserves the right to deduct from amounts which are or shall become due and payable to the Contractor under this or any contract between the Contractor and the Institution any amounts which are or shall become due and payable to the Institution by the Contractor.
- D. <u>STANDARD TERMS AND CONDITIONS:</u>
- D.1. Required Approvals. The Institution is not bound by this Contract until it is approved by the appropriate officials in accordance with applicable Tennessee Institution laws and regulations.
- D.2. <u>Modification and Amendment</u>. This Contract may be modified only by a written amendment executed by all parties hereto and approved by the appropriate officials in accordance with applicable Tennessee Institution laws and regulations.
- D.3. Ethnicity. This Contract shall not be executed until the Contractor has completed the Minority/Ethnicity Form.
- D.4. <u>Termination for Convenience</u>. The Institution may terminate this Contract without cause for any reason. Said termination shall not be deemed a Breach of Contract by the Institution. The Institution shall give the Contractor at least 60 days written notice before the effective termination date. The Contractor shall be entitled to receive compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the Institution be liable to the Contractor for compensation for any service which has not been rendered. Upon such termination, the Contractor shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- D.5. <u>Termination for Cause</u>. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor violates any terms of this Contract, the Institution shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Contractor shall not be relieved of liability to the Institution for damages sustained by virtue of any breach of this Contract by the Contractor.
- D.6. <u>Subcontracting</u>. The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the Institution. If such subcontracts are approved by the Institution, they shall contain, at a minimum, sections of this Contract pertaining to "Conflicts of Interest" and "Nondiscrimination" (sections D.6. and D.7.). Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.

- D.7. Conflicts of Interest. The Contractor warrants that no part of the total Contract Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed relative to this Contract.
- D.8.. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of disability, age, race, color, religion, sex, veteran status, national origin, or any other classification protected by Federal, or Tennessee constitutional or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.9. Records. The Contractor shall maintain documentation for all charges against the Institution under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the Institution, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.10. <u>Monitoring</u>. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the Institution, the Comptroller of the Treasury, or their duly appointed representatives.
- D.11. <u>Strict Performance</u>. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D.12. <u>Independent Contractor</u>. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that the parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.

The Contractor, being an independent contractor and not an employee of the Institution, agrees to carry adequate public liability and other appropriate forms of insurance, including adequate public liability and other appropriate forms of insurance on the Contractor's employees, and to pay all applicable taxes incident to this Contract.

- D.13. <u>Institution Liability</u>. The Institution shall have no liability except as specifically provided in this Contract.
- D.14. <u>Force Majeure</u>. The obligations of the parties to this contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, acts of God, riots, wars, epidemics or any other similar cause.
- D.15. <u>Institution and Federal Compliance</u>. The Contractor shall comply with all applicable State and Federal laws and regulations, including Institution policies and guidelines in the performance of this Contract.
- D.16. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Contractor agrees that it will be subject to the exclusive jurisdiction of the Tennessee Claims Commission in actions that may arise under this Contract. The Contractor acknowledges and agrees that any rights or claims against the Institution or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under Tennessee Code Annotated, Sections 9-8-101 through 9-8-407.

D.17 <u>Prohibition on Hiring Illegal Immigrants.</u> Tennessee Public Chapter No. 878 of 2006, TCA 12-4-124, requires that Contactor attest in writing that Contractor will not knowingly utilize the services of illegal immigrants in the performance of this Contract, who will utilize the services of illegal immigrants in the performance of this Contract. The attestation shall be made on the form, Attestation re Personnel Used in Contract Performance ("the Attestation"), which is attached and hereby incorporated as Attachment C.

If Contractor is discovered to have breached the Attestation, the Commissioner of Finance and Administration shall declare that the Contractor shall be prohibited from contracting or submitting a bid to any Tennessee Board of Regents institution or any other state entity for a period of one (1) year from the date of discovery of the breach. Contractor may appeal the one (1) year by utilizing an appeals process in the Rules of Finance and Administration, Chapter 0620.

- D.18. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral:
- D.19. <u>Severability</u>. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.
- D.20. <u>Headings</u>. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.
- E. SPECIAL TERMS AND CONDITIONS:
- E.1. Communications and Contacts.

The Institution:
Angela Gregory, Director of Purchasing and Contracts
Tennessee Board of Regents
1415 Murfreesboro Rd., Suite 350
Nashville, TN 37217
615-366-4436
615-366-3902 (fax)
angela.gregory@tbr.edu

The Contractor:
Lainie Brown, Academic Account Executive
EBSCO Publishing
10 Estes Street
Ipswich, MA 01938
800-653-2726
Ibrown@epnet.com

All instructions, notices, consents, demands, or other communications shall be sent in a manner that verifies proof of delivery. Any communication by facsimile transmission shall also be sent by United States mail on the same date of the facsimile transmission. All communications which relate to any changes to the contract shall not be considered effective until agreed to, in writing, by both parties.

E.3. <u>Subject to Funds Availability</u>. The Contract is subject to the appropriation and availability of Institution and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the Institution reserves the right to terminate the Contract upon written notice to the Contractor. Said termination shall not be deemed a breach of Contract by the Institution. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. Should such an event occur, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Contractor shall have no right to recover from

the Institution any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

- E.4. <u>Breach</u>. A party shall be deemed to have breached the Contract if any of the following, including but not limited to, occurs:
  - failure to perform in accordance with any term or provision of the Contract;
  - partial performance of any term or provision of the Contract;
  - any act prohibited or restricted by the Contract, or
  - violation of any warranty.

For purposes of this Contract, these items shall hereinafter be referred to as a "Breach."

- a. Contractor Breach—Institution shall notify Contractor in writing of a Breach.
  - (1) In event of a Breach by Contractor, the institution shall have available the remedy of Actual Damages and any other remedy available at law or equity.
  - (2) Partial Default— In the event of a Breach, the Institution may declare a Partial Default. In which case, the Institution shall provide the Contractor written notice of: (1) the date which Contractor shall terminate providing the service associated with the Breach; and (2) the date the Institution will begin to provide the service associated with the Breach. Notwithstanding the foregoing, the Institution may revise the time periods contained in the notice written to the Contractor.

In the event the Institution declares a Partial Default, the Institution may withhold, together with any other damages associated with the Breach, from the amounts due the Contractor the greater of: (1) amounts which would be paid the Contractor to provide the defaulted service; or (2) the cost to the Institution of providing the defaulted service, whether said service is provided by the Institution or a third party. To determine the amount the Contractor is being paid for any particular service, the Institution shall be entitled to receive within five (5) days any requested material from Contractor. The Institution shall make the final and binding determination of the amount.

The Institution may assess Liquidated Damages against the Contractor for any failure to perform. Upon Partial Default, the Contractor shall have no right to recover from the Institution any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount. Contractor agrees to cooperate fully with the Institution in the event a Partial Default is declared.

- b. Institution Breach—In the event of a Breach of contract by the Institution, the Contractor shall notify the Institution in writing within 30 days of any Breach of contract by the Institution. The notice shall contain a description of the Breach. In the event of Breach by the Institution, the Contractor may avail itself of any remedy at law in the Claims Commission; provided, however, failure by the Contractor to give the Institution written notice and opportunity to cure as described herein operates as a waiver of the Institution's Breach. Failure by the Contractor to file a claim before the appropriate forum in Tennessee with jurisdiction to hear such claim within one (1) year of the written notice of Breach shall operate as a waiver of said claim in its entirety. It is agreed by the parties this provision establishes a contractual period of limitations for any claim brought by the Contractor.
- E.5. <u>Institution Ownership of Work Products</u>. The Institution shall have all ownership right, title, and interest, including ownership of copyright, in all work products created, designed, developed, derived, documented, installed, or delivered to the Institution under this Contract. The Institution shall have unlimited rights to use, disclose, reproduce, or publish, for any purpose whatsoever, all said work products. The Contractor shall furnish such information and data upon request of the Institution, in accordance with the Contract and applicable Institution law.

- E.6. <u>Printing Authorization</u>. The Contractor agrees that no publication coming within the jurisdiction of Tennessee Code Annotated, Section 12-7-101, et. seq., shall be printed unless a printing authorization number has been obtained and affixed as required by Tennessee Code Annotated, Section 12-7-103 (d).
- E.7. <u>Competitive Procurements</u>. If this Contract provides for reimbursement of the cost of goods, materials, supplies, equipment, or services. Such procurements shall be made on a competitive basis, where practical.
- E.8. No equipment shall be purchased under this contract.
- E.9 <u>Institution Furnished Property</u>. The Contractor shall be responsible for the correct use, maintenance, and protection of all articles of nonexpendable, tangible, personal property furnished by the Institution for the Contractor's temporary use under this Contract. Upon termination of this Contract, all property furnished shall be returned to the Institution in good order and condition as when received, reasonable use and wear thereof excepted. Should the property be destroyed, lost, or stolen, the Contractor shall be responsible to the Institution for the residual value of the property at the time of loss.
- E.10. Lobbying. The Contractor certifies, to the best of its knowledge and belief, that:

No federally appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, and entering into any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

The Contractor shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-grants, subcontracts, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients of federally appropriated funds shall certify and disclose accordingly.

- E.11. <u>Prohibited Advertising</u>. The Contractor shall not refer to this Contract or the Contractor's relationship with the Institution hereunder in commercial advertising in such a manner as to state or imply that the Contractor or the Contractor's services are endorsed.
- E.12. Copyrights and Patents. The Contractor agrees to indemnify and hold harmless the Institution as well as its officers, agents, and employees from and against any and all claims or suits which may be brought against the Institution for infringement of any laws regarding patents or copyrights which may arise from the Contractor's performance of this Contract. In any such action brought against the Institution, the Contractor shall satisfy and indemnify the Institution for the amount of any final judgment for infringement. The Contractor further agrees it shall be liable for the reasonable fees of attorneys for the Institution in the event such service is necessitated to enforce the terms of this Contract or otherwise enforce the obligations of the Contractor to the Institution. The Institution shall give the Contractor written notice of any such claim or suit and full right and opportunity to conduct the Contractor's own defense thereof.
- E.13. Hold Harmless. The Contractor agrees to indemnify and hold harmless the Institution as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys for the Institution in the event such service is necessitated to enforce the terms of this Contract or otherwise enforce the obligations of the Contractor to the Institution.

In the event of any such suit or claim, the Contractor shall give the Institution immediate notice thereof and shall provide all assistance required by the Institution in the Institution's defense. The Institution shall give the Contractor written notice of any such claim or suit, and the Contractor shall have full right and obligation to conduct the Contractor's own defense thereof. Nothing contained herein shall be deemed to accord to the Contractor, through its attorney(s), the right to represent the Institution in any legal matter, such rights being governed by Tennessee Code Annotated, Section 8-6-106.

- E.14. <u>Debarment and Suspension</u>. The Contractor certifies, to the best of its knowledge and belief, that it and its principals:
  - a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal or Institution department or agency;
  - have not within a three (3) year period preceding this Contract been convicted of, or had a civil
    judgment rendered against them from commission of fraud, or a criminal offence in connection
    with obtaining attempting to obtain, or performing a public (Federal, State, or Local) transaction or
    grant under a public transaction; violation of Federal or State antitrust statutes or commission of
    embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false
    Statements, or receiving stolen property;
  - c. are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or Local) with commission of any of the offenses detailed in section b. of this certification; and
  - d. have not within a three (3) year period preceding this Contract had one or more public transactions (Federal, State, or Local) terminated for cause or default.

IN WITNESS WHEREOF:		
EBSCO PUBLISHING:		
[NAME AND TITLE]	Date	-
TENNESSEE BOARD OF REGENTS:		
Charles W. Manning, Chancellor	Date	•



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### Product Order Form

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#### Attachment B

#### TBR UNIVERSITIES AND COLLEGES

Tennessee Board of Regents, Central Office Austin Peay State University East Tennessee State University Middle Tennessee State University Tennessee State University Tennessee Technological University University of Memphis Chattanooga State Technical Community College Cleveland State Community College Columbia State Community College Dyersburg State Community College Jackson State Community College Motlow State Community College Nashville State Community College Northeast State Technical Community College Pellissippi State Technical Community College Southwest Tennessee Community College Volunteer State Community College Walters State Community College

#### ATTACHMENT C

#### ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

CONTRACT NUMBER:	
CONTRACTOR LEGAL ENTITY NAME:	
FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number)	

The Contractor, identified above, does hereby attest, certify, warrant, and assure that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract.

SIGNATURE & DATE:

NOTICE: This attestation MUST be signed by an individual empowered to contractually bind the Contractor. If said individual is not the chief executive or president, this document shall attach evidence showing the individual's authority to contractually bind the Contractor.

06/07 1-year agreement

# AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT BY AND BETWEEN EBSCO PUBLISHING AND THE TENNESSEE BOARD OF REGENTS

This Amendment to the Professional Services Agreement ("Agreement"), dated June 8, 2004 by and between EBSCO Publishing ("Contractor") and the Tennessee Board of Regents ("TBR") is made, entered into and effective June 14, 2006.

#### WITNESSETH:

WHEREAS, The Contractor and the TBR have entered into the Agreement as amended and subject to certain modifications, clarifications and changes contained in this Amendment; and

WHEREAS, The Contractor and the TBR agree, through this Amendment, to certain modifications, additions and clarifications to the terms and conditions in the Professional Services Agreement.

NOW, THEREFORE, in consideration for the mutual covenants undertaken herein, the parties hereby agree to amend the terms and conditions of the Agreement specifically as set forth herein:

- 1. <u>Prevailing Documents.</u> In the event of any conflict or inconsistency between the terms and conditions of this Amendment and the Agreement as previously amended, the terms of this Amendment shall prevail.
- 2. Item B. The TBR agrees to compensate the Contractor for the additional item noted below:
  - 1. \$84,939 for the period of August 1, 2006 through July 31, 2007, payable upon invoicing, for the following EBSCO Publishing Package Subscriptions to be used by all TBR institutions including the TTC's:
    - 19 CINAHL with Full Text and CINAHL Select
    - 1 Clinical Pharmacology
    - 1 EBSCOHOST Health Source: Nursing/Academic Edition
    - 19 EBSCOHOST Nursing and Allied Health Collection: Comprehensive
  - 2. In no event shall the maximum liability of the TBR under this contract amendment and the preceding amendment exceed \$84,939.
  - TBR agrees to the EBSCO Publishing License as amended by and attached to the Agreement and to no additional license agreement.

EBSCO PUBLISHING	
By: Gary C. Balentine	•
Title: Vice President, Insid	
Date: 9/8/06	
TENNESSEE BOARD OF REGENTS	1
By: Chale Mann	11/11 Date: 8-28-06
Charles Manning, Chancellor	11
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